

Miller & Dubuc, P.C.  
14 Corporate Woods Boulevard  
Albany, New York 12211

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK (Central Islip)

-----  
In re:

**NOTICE OF MOTION TO VACATE  
AUTOMATIC STAY**

GARY MANCINELLI, a/k/a  
GARY R. MANCINELLI and  
KIMBERLY MANCINELLI, a/k/a  
KIM MANCINELLI, a/k/a KIMBERLY  
A. MANCINELLI,

Chapter 13  
Case No. 11-72216  
**HON. ALAN S. TRUST**

Debtor.  
-----

**PLEASE TAKE NOTICE**, that upon the annexed Request for Relief of Miller & Dubuc, P.C., attorney for M&T Bank ("M&T"), the undersigned respectfully moves this Court for an order, pursuant to 11 U.S.C. Section 362(d)(1), modifying the automatic stay herein to permit movant to proceed with an action to repossess a certain boat subject to movant's security interest, described as a 2008 Bayliner boat, together with such other and further relief as to the Court may seem just and proper.

**PLEASE TAKE FURTHER NOTICE** that this motion shall be returnable on the 23<sup>rd</sup> day of June, 2011 at 10:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, at the Long Island Federal Courthouse, 290 Federal Plaza, Room 960, Central Islip, New York 11722.

**PLEASE TAKE FURTHER NOTICE**, that answering papers, if any, must comply with the Federal Rules of Bankruptcy Procedure, shall be filed with the Court and served upon and received by Miller & Dubuc, P.C., attorneys for the Movant, at their offices located at 14 Corporate Woods Boulevard, Albany, New York 12211 so that they are received no later than

three (3) business days before the hearing on the Motion.

Dated: May 25, 2011

*/s/ Richard J. Miller*

Richard J. Miller RM8460

**MILLER & DUBUC**

A Professional Corporation

Attorney for Movant

14 Corporate Woods Boulevard

Albany, New York 12211

Phone: (518) 465-7591

**TO: GARY C. FISCHOFF, ESQ.**

Attorney for Debtors

40 Crossways Park Drive

Woodbury, New York 11797

**MARIANNE DEROSA, ESQ.**

Trustee

115 Eileen Way, Suite 105

Syosset, New York 11791

**UNITED STATES TRUSTEE**

560 Federal Plaza

Room 560

Central Islip, New York 11722

**GARY MANCINELLI**

**KIMBERLY MANCINELLI**

Debtors

3 Meier Place

Bay Shore, New York 11706

/tb

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

---

In re:

IN BANKRUPTCY  
NO. 11-72216  
Chapter 13

GARY MANCINELLI, a/k/a  
GARY R. MANCINELLI and  
KIMBERLY MANCINELLI, a/k/a  
KIM MANCINELLI, a/k/a KIMBERLY  
A. MANCINELLI,

Debtors.

**APPLICATION IN  
SUPPORT OF MOTION  
TO VACATE STAY**

---

**TO: HON. ALAN S. TRUST, Bankruptcy Judge.**

**NORMA PAOLINI**, being duly sworn, deposes and says:

1. I am a banking officer with M&T Bank ("M&T") and am duly authorized to make this affidavit based upon the books and records of the corporation, made and maintained in the regular course of business.

2. This is an application to obtain relief from the stay for cause pursuant to 11 U.S.C. 362(d)(1) based upon a payment default.

3. Applicant holds a duly perfected security interest in a certain 2008 Bayliner Boat (VIN# USHA74DED808) owned by the debtors. Copies of the contract and proof of recorded lien are annexed hereto.

4. As of May 10, 2011, the account is past due \$1278.54; the payoff balance is \$40,179.40 and the approximate replacement value for the boat is \$28,030.00. Copies of the relevant NADA page is attached hereto.

5. To be noted is that the debtors' Chapter 13 plan provides for the surrender of the boat to M&T.

6. Applicant shall account to the Trustee for any surplus money realized from the sale of the boat.

7. No previous application has been made for the relief requested herein.

**WHEREFORE** applicant prays for the entry of an order modifying the stay granted pursuant to 11 U.S.C., Section 362 to permit it to obtain possession of and sell the collateral described herein

pursuant to its duly perfected security interest in the collateral, and that it have such other and further relief as to the Court may seem just and proper.

**M&T BANK**

*/S/ Norma Paolini*

**Norma Paolini**  
Banking Officer

Sworn to before me this  
19 day of May, 2011

*/s/ James M. Monte*

**NOTARY PUBLIC**      **Expires: 8/15/13**

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----  
In re:

IN BANKRUPTCY  
NO: 11-72216  
Chapter 13

GARY MANCINELLI, a/k/a  
GARY R. MANCINELLI and  
KIMBERLY MANCINELLI, a/k/a  
KIM MANCINELLI, a/k/a KIMBERLY  
A. MANCINELLI,

**AFFIDAVIT OF SERVICE**

Debtors.  
-----

STATE OF NEW YORK)  
COUNTY OF ALBANY) ss:

**THERESA BURNS**, being duly sworn, deposes and says:

I am employed by the attorney for M&T Bank. I am over 18 years of age and not a party to this action. On May 25, 2011, I served by mail the within *Notice of Motion to Vacate Stay* upon:

**GARY C. FISCHOFF, ESQ.**

Attorney for Debtors  
40 Crossways Park Drive  
Woodbury, New York 11797

**MARIANNE DEROSA, ESQ.**

Trustee  
115 Eileen Way, Suite 105  
Syosset, New York 11791

**UNITED STATES TRUSTEE**

560 Federal Plaza  
Room 560  
Central Islip, New York 11722

**GARY MANCINELLI**

**KIMBERLY MANCINELLI**

Debtors  
3 Meier Place  
Bay Shore, New York 11706

By depositing a true copy thereof enclosed in a post-paid wrapper in an official depository regularly maintained by the United States Post Office.

/s/ Theresa Burns

**THERESA BURNS**

Sworn to before me this  
25<sup>th</sup> day of May, 2011.

/s/ John M. Dubuc

**NOTARY PUBLIC**

**John M. Dubuc**  
**02DU6038123**  
**Expires: 3/6/14**

**Alan S. Trust**  
United States Bankruptcy Judge